



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Daniel J. Clarke, President
Dan's Diesel Performance, Inc.
1279 Anvil Road
Machesney Park, Illinois 61115
DansDieselPerformance@gmail.com

Re: Finding of Violation for Clean Air Act Violations
Dan's Diesel Performance, Inc.
Machesney Park, Illinois

Dear Mr. Clarke:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Dan's Diesel Performance, Inc. (DDP or you) for violating Section 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(A) and 7522(a)(3)(B). As summarized in the attached FOV, EPA has determined that DDP has removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines, and has manufactured, sold, offered to sell, and installed parts or components that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your Machesney Park facility's technical and management personnel to attend the conference to discuss measures that you can take to come into compliance with the CAA. You may have an attorney represent you at this conference.

The EPA contact in this matter is Cody Yarbrough. You may call him at (312) 886-9137 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

**BRIAN
DICKENS**

Digitally signed by BRIAN DICKENS
Date: 2020.09.16 11:51:27 -05'00'

Brian Dickens

Chief, Air Enforcement and Compliance Assurance Section MN/OH

Enclosure: Small Business Resources Information Sheet

cc: Steward Cables
Hassan + Cables
stewart@hassancables.com

Kent Mohr, Manager
Compliance Section
Bureau of Air
Illinois Environmental Protection Agency
Kent.Mohr@Illinois.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Dan's Diesel Performance, Inc.
Machesney Park, Illinois

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FINDING OF VIOLATION

EPA-5-20-MOB-13

Proceedings Pursuant to
The Clean Air Act,
42 U.S.C. §§ 7401–7671q

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FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to Dan's Diesel Performance, Inc. (DDP) for violating Section 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(A) and 7522(a)(3)(B).

Statutory and Regulatory Background

1. Title II of the CAA, 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” Section 101(b)(1)-(2) of the CAA, 42 U.S.C. § 7401(b)(1)-(2).
2. EPA promulgated emissions standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicles and motor vehicle engines, under Section 202 of the CAA, 42 U.S.C. § 7521. *See* 40 C.F.R. Part 86.
3. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a motor vehicle manufacturer from selling a new motor vehicle in the United States unless the motor vehicle is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The certificate of conformity will include, among other things, a description of the motor vehicle engines, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.
4. Motor vehicle and motor vehicle engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control

system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”
See 40 C.F.R. §§ 86.094-2 and 86.1803-01.

5. To meet the emission standards in 40 C.F.R. Part 86, and qualify for a certificate of conformity, diesel-powered motor vehicle and motor vehicle engine manufacturers may utilize control devices or elements of design such as Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), Diesel Oxidation Catalyst (DOC), and/or Selective Catalytic Reduction (SCR) systems.
6. Diesel-powered motor vehicle and motor vehicle engine manufacturers may also employ retarded fuel injection timing as a primary element of design to limit emissions of NO_x. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x . . .”).
7. Modern motor vehicles and engines are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the DPF, EGR, SCR systems and the engine fueling strategy.
8. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require motor vehicles to have a number of devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. *See* 40 C.F.R. §§ 86.007-17, 86.010-18, and 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.
9. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), makes it unlawful for “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.”
10. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

11. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).
12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include a corporation.

Facility Background

13. DDP is an “aftermarket automotive parts” manufacturer, supplier and installer located in Machesney Park, Illinois. “Aftermarket automotive parts” are replacement automotive parts that are not made by the original motor vehicle manufacturer.
14. DDP is a “person,” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
15. On November 19, 2019, under Section 208 of the CAA, 42 U.S.C. § 7542, EPA issued a Request to Provide Information Pursuant to the Clean Air Act (Information Request) to DDP.
16. On February 11, 2020, DDP submitted a response to EPA’s Information Request. DDP also provided supplemental responses on May 20, 2020 and July 15, 2020. In the response, DDP provided information showing that between January 1, 2018 and November 19, 2019, DDP sold at least 2,296 parts or components that disable, remove, bypass, defeat, or render inoperative air pollution emission control systems installed on or in motor vehicles and motor vehicle engines in compliance with Title II of the CAA. More specifically, DDP sold 177 parts or components that remove or bypass the EGR system or can only operate with EGR system removed (EGR Delete Hardware) and 541 parts or components that remove or bypass the DPF, DOC, SCR and/or other exhaust aftertreatment system (Aftertreatment Delete Hardware).
17. DDP also sold and in most cases manufactured 1,578 tunes or tuners where a principal effect of the tune or tuner was to bypass, defeat or render inoperative the engine fueling strategy, DPF, EGR, DOC, SCR, and/or OBD systems and/or tamper with the elements of design on motor vehicles or motor vehicle engines (Tuning Products). Most of these Tuning Products were manufactured by DDP and sold under DDP’s “Commander” line of tunes and tuners. Examples of the products listed above include Tuning Products from Dan’s Diesel Performance, EFI Live, EZ Lynk, and SCT, EGR Delete Hardware from Big End Performance, Deviant Race Parts, ProFab Performance, OZ Tuner, and Wehrli Custom Fab, and Aftertreatment Delete Hardware from aFe, FloPro, JAMO, and MBRP/P1 Race Parts.
18. In its response to EPA’s Information Request, DDP provided 1,778 invoices for products sold and/or installed at its Machesney Park facility. Of the 1,778 invoices, DDP claims that 1,362 of these invoices are for “products which can operate on the vehicle “emissions on” or “emissions optional,” but which DDP sold to customers at their option to install with or without emissions present, and could affect ambient air quality based on

the application.” These invoices show that, of the 2,296 parts or components sold by DDP as described in Paragraphs 16 and 17 of this FOV, DDP installed at least 79 of the EGR Delete Hardware Products, 200 of the Aftertreatment Delete Hardware products, and 261 of the Tuning Products.

19. Of the Tuning Products sold by DDP, most are also manufactured by DDP and sold under its “Commander” line of Tuning Products. None of these products have received an Executive Order from the California Air Resources Board (CARB) for exemption from California’s emission control system anti-tampering law, California Vehicle Code § 27156, and DDP has not submitted any applications to CARB requesting such exemption. DDP has also not provided EPA with a reasonable basis for knowing that the use of these products will not adversely affect emissions performance when used on motor vehicles or motor vehicle engines. The table below lists certain Commander Tuning Products manufactured and sold by DDP and the motor vehicle elements of design they are able to modify, including fueling strategy (fuel pressure, fuel injection timing, etc.), EGR delete capability, and aftertreatment emission control system delete (DOC, DPF, and/or SCR):

Commander Model	Fueling Strategy	EGR Delete	Aftertreatment Delete
GM LB7 Duramax 2001-2004	X		
GM LLY Duramax 2004.5-2005	X		
GM LBZ Duramax 2006-2007	X	X	
GM LMM Duramax 2007.5-2010	X	X	
GM LML Duramax 2011-2016	X	X	X
Ram 5.9 Cummins 2006-2007.5	X		
Ram 6.7 Cummins 2007.6-2012	X	X	X
Ram 6.7 Cummins 2013-2018	X	X	X

20. EPA finds that the parts and components sold and offered for sale by DDP are intended for “motor vehicles” as defined by Section 216(2) of the CAA.

Violations

21. EPA finds that DDP violated Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), by knowingly removing and/or rendering inoperative the engine fueling strategy, DPF, EGR, OBD, and SCR systems, and tampering with the emissions-related elements of the ECM installed on motor vehicles.
22. EPA finds that DDP violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling, offering to sell, and/or installing parts and/or components where a principal effect of the part or component was to bypass, defeat or render inoperative the engine fueling strategy, DPF, EGR, OBD, and SCR systems, and tampering with the emission-related elements of the ECM installed on motor vehicles, where it knew or should have known that such parts and/or components were being offered for sale or installed for such use or put to such use.

Environmental Impact of Violations

23. These violations may result in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

Enforcement Authority

24. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3), are subject to actions to restrain such violations under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

MICHAEL HARRIS

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HARRIS
Date: 2020.09.21 16:44:47 -05'00'

Michael D. Harris

Director

Enforcement and Compliance Assurance Division

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Office of Small and Disadvantaged Business Utilization (OSDBU)

www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

www.epa.gov/compliance

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

Compliance Assistance Centers

www.complianceassistance.net

EPA sponsored Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Surface Finishing

<http://www.sterc.org>

Paints and Coatings

www.paintcenter.org

Printing

www.pneac.org

Ports

www.portcompliance.org

Transportation

www.tercenter.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP, and Oil Information Center

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 1-734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills - <http://nrc.uscg.mil> or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) -

www.epa.gov/p2/pollution-prevention-resources#ppic or 1-202-566-0799

Safe Drinking Water Hotline -

www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states/list>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

www.epa.gov/tribalportal

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www.epa.gov/enforcement/small-businesses-and-enforcement

EPA's Audit Policy

www.epa.gov/compliance/epas-audit-policy

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.